

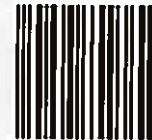
**CERTIFIED MAIL®**



7019 1640 0001 3574 3618



1000



98101

U.S. POSTAGE PAID  
FCM LETTER  
SEATTLE, WA  
98115  
MAR 18, 20  
AMOUNT

**\$5.80**

R2304E104856-22

**SMITH &  
LOWNEY**  
PLLC

2317 E. John St.  
Seattle, WA 98112  
(206) 860-2883  
[www.smithandlowney.com](http://www.smithandlowney.com)

Chris Hladick, Regional Administrator  
U.S. EPA, Region 10  
1200 Sixth Ave, Suite 155  
Seattle, WA 98101

98101-318899



**SMITH & LOWNEY, P.L.L.C.**  
2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

March 18, 2020

**Via Certified Mail - Return Receipt Requested**

Managing Agent  
Perdue Foods LLC dba Draper Valley Farms  
1000 Jason Lane  
Mount Vernon, WA 98273

**Via Certified Mail - Return Receipt Requested**

Managing Agent  
Perdue Foods LLC dba Draper Valley Farms  
31149 Old Ocean City Rd.  
Salisbury, MD 21804

Re: **NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND  
REQUEST FOR STORMWATER POLLUTION PREVENTION PLAN**

Dear Managing Agent:

We represent Waste Action Project, P.O. Box 9281, Covington, WA 98042, (206) 849-5927. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of Waste Action Project's intent to file a citizen suit against Perdue Foods, LLC under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan required by Draper Valley's industrial stormwater general permit for its Mount Vernon facility.

Draper Valley Farms, Inc. ("Draper Valley") has violated and continues to violate the CWA (see sections 301 and 307, 33 USC §§ 1311 and 1317) and its CWA permit number ST0003861 (the "Permit") with respect to operations of, and discharges of wastewater and pollutants to the City of Mt. Vernon sewage treatment plant, and, thereby, to waters of the state, from its slaughterhouse facility located at 1000 Jason Lane, Mount Vernon, Washington 98273 (the "slaughterhouse" or "facility") as described herein. The Permit was issued by the Washington Department of Ecology on August 17, 2016, became effective on September 1, 2016, and expires on August 31, 2021.

Draper Valley has previously been authorized to discharge wastewater to the Mt. Vernon sewage treatment plant under permits dating back to 1977. The previous iteration of permit ST0003861 became effective on October 1, 2010, and expired on September 30, 2015. This previous permit included the same or substantially identical requirements as the current permit, so Draper Valley's violations of its previous permit are ongoing.

## I. Background

The CWA prohibits the discharge of pollutants to navigable waters unless in compliance with the CWA. 33 USC § 1311. The CWA regulates three categories of point sources: those that discharge pollutants directly to waters, publicly owned treatment works (“POTW”) that treat municipal sewage or industrial wastewater before discharging to navigable waters, and indirect discharges that discharge to a POTW. Indirect dischargers are regulated under section 307 of the Clean Water Act and are prohibited from discharging pollutants in violation of any effluent standard or prohibition or pretreatment standard. 33 U.S.C. §§ 1317(d), 1311(a). Where a POTW develops prohibitions or limits on pollutants pursuant to 40 C.F.R. § 403.5(c), such limits are pretreatment standards for the purposes of section 307(d) of the Act.

The Permit authorizes Draper Valley to discharge wastewater to the City of Mount Vernon Publically Owned Treatment Works, which in turn discharges to the Skagit River. The Skagit River is on the Washington Department of Ecology’s list of impaired waters because it is water quality limited by fecal coliform, pH, temperature, and PCBs.

## II. Effluent Limitations

Condition S1 of the Permit requires that all discharges must comply with the terms and conditions of the Permit and makes it unlawful for Draper Valley to discharge pollutants more frequently than, or at a concentration in excess of, the discharge limits established in the Permit.

### A. Five-day Biological Oxygen Demand

Condition S1 of the Permit prohibits discharges of five-day biological oxygen demand (BOD<sub>5</sub>) in excess of 1430 pounds per day (measured by the maximum consecutive three day average). The previous iteration of the permit established the same effluent limitation. Draper Valley has violated this effluent limitation by repeatedly discharging levels of BOD<sub>5</sub> in excess of the limit, as identified in the table below, violations which are likely to recur:

**Table 1: BOD<sub>5</sub> Discharge Violations**

	<b>Dates of Violation</b>	<b>BOD<sub>5</sub> consecutive three-day average, pounds per day</b>  <b>(Limit = 1,430 pounds per day, maximum consecutive three-day average)</b>
1	1/28/20 – 1/30/20	1,456.67 lbs/day

2	1/7/20 – 1/9/20	1,551.33
3	1/3/20 – 1/5/20	1,533.67
4	1/1/20 – 1/3/20	1,456.33
5	12/19/19 – 12/21/19	1,439.67
6	12/18/19 – 12/20/19	1,682.33
7	12/17/19 – 12/19/19	1,509.67
8	12/11/19 – 12/13/19	1,451.67
9	12/10/19 – 12/12/19	1,716
10	12/5/19 – 12/7/19	1,591.67
11	12/4/19 – 12/6/19	1,950.33
12	12/3/19 – 12/5/19	2,162.67
13	12/2/19 – 12/4/19	1,599.67
14	11/26/19 – 11/28/19	1,786.33
15	11/25/19 – 11/27/19	1,435
16	11/20/19 – 11/22/19	1,735.33
17	11/19/19 – 11/21/19	1,664.33
18	11/14/19 – 11/15/19	1,488.33
19	11/13/19 – 11/15/19	1,545.67
20	11/12/19 – 11/14/19	1,479.33
21	10/30/19 – 11/1/19	1,459.67
22	9/19/19 – 9/21/19	1,444.67
23	9/18/19 – 9/20/19	1,608
24	9/17/19 – 9/19/19	1,448
25	9/12/19 – 9/14/19	1,480
26	9/11/19 – 9/13/19	1,467.67
27	9/4/19 – 9/6/19	1,564.67
28	8/27/19 – 8/29/19	1,498.67
29	8/22/19 – 8/24/19	1,565.67
30	8/21/19 – 8/23/19	1,686.67
31	8/20/19 – 8/22/19	1,638.33
32	8/15/19 – 8/17/19	1,434
33	8/14/19 – 8/16/19	1,563.67
34	8/13/19 – 8/15/19	1,490
35	8/6/19 – 8/8/19	1,605
36	7/31/19 – 8/2/19	1,454.33
37	7/30/19 – 8/1/19	1,458.33
38	7/10/19 – 7/12/19	1,479.33
39	6/27/19 – 6/29/19	1,847.67
40	6/26/19 – 6/28/19	2,051.67
41	6/25/19 – 6/27/19	2,015.33
42	6/12/19 – 6/14/19	1,514
43	6/11/19 – 6/13/19	1,515.33
44	5/21/19 – 5/23/19	1,449.33
45	4/17/19 – 4/19/19	1,480
46	4/16/19 – 4/18/19	1,707.33

Draper Valley has a long history of BOD<sub>5</sub> discharge violations at the Facility, going back to at least 2008, for which Waste Action Project previously sued Draper Valley in 2012. That prior citizen suit concluded with a Consent Decree in W.D. Wash. case no. 2:12-cv-01870-RSL, which terminated on or about January 20, 2015. It is inexcusable that Draper Valley is again violating the Permit with persistent BOD<sub>5</sub> discharge violations. Draper Valley has been aware of these more recent BOD<sub>5</sub> discharge violations (set forth in Table 1) since at least April 2019, and Draper Valley purported to be working on a solution to mitigate its pollution and comply with the Permit for nearly a year. Yet these violations have continued each and every month since that time and continue to occur.

### III. Reporting Requirements

A. Condition S3.E of the Permit requires Draper Valley to take several actions when it violates or is unable to comply with any Permit condition, including immediately taking action to stop, contain, and cleanup unauthorized discharges or otherwise stop the noncompliance and correct the problem. Draper Valley is in violation of Condition S3.E because Draper Valley has not taken adequate action to stop, contain, and cleanup unauthorized discharges, including and as indicated by the discharges in excess of effluent limits identified in Table 1 of this Notice of Intent to Sue Letter.

B. Pursuant to condition S3.E.2.b.4 of the Permit, when Draper Valley violates a Permit discharge limit, it must report the violation by telephone to Ecology within 24 hours from the time that Draper Valley becomes aware of the violation. Condition S3.E.2.c requires Draper Valley to provide a written submission within five days of becoming aware of any occurrence of noncompliance specified in condition S3.E.2, including violations of the maximum discharge limits for BOD<sub>5</sub>. Draper Valley is in violation of Condition S3.E.2.b and c because Draper Valley has not contacted Ecology by telephone within 24 hours or submitted a written report within five days of becoming aware of each violation identified in Table 1 of this Notice of Intent to Sue letter.

### IV. Operation and Maintenance

Condition S4 of the Permit requires Draper Valley, at all times, to properly operate and maintain all facilities or systems of treatment and control which are installed to achieve compliance with the terms and conditions of the Permit. Draper Valley is in violation of condition S4 of the Permit because Draper Valley has not properly operated its facilities to achieve compliance with the discharge limits, as demonstrated by exceedances identified in Table 1 of this Notice of Intent to Sue Letter. In addition, and as part of these failures, Draper Valley has not properly trained its wastewater treatment system operators, failed to properly maintain its wastewater treatment system chemical dosing equipment and pumps, and repeatedly connected slaughterhouse equipment into its wastewater system in a manner that interferes with proper functioning of the treatment system. These violations have occurred during each month identified in Table 1 of this Notice of Intent to Sue Letter, and any preceding period during which Draper Valley should have maintained its facilities and/or trained its employees but failed to do so.

V. Prohibited discharges

Condition S5.B.3 prohibits Draper Valley from discharging any pollutant, including oxygen-demanding pollutants such as BOD<sub>5</sub>, at a concentration that will cause interference with the POTW. Draper Valley violated this condition on each of the days identified in Table 1 of this Notice of Intent to Sue Letter. In addition to those 3-day averages identified in Table 1, Draper Valley discharged over 2,000 lbs of BOD<sub>5</sub> on each of the following days, which are concentrations that cause interference with the POTW: 4/16/19, 4/18/19, 6/26/19, 6/27/19, 8/6/19, 11/26/19, 12/3/19, 12/10/19, 12/20/19, 1/3/20.

VI. Request for Stormwater Pollution Prevention Plan

In addition to the indirect discharge Permit, Draper Valley's discharges of industrial stormwater to Kulshan Creek are governed by industrial stormwater general permit number WAR000552 ("General Permit"). Pursuant to Condition S9.F. of the General Permit, Waste Action Project hereby requests that Draper Valley provide a copy of, or access to, its stormwater pollution prevention plan ("SWPPP") complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to the undersigned at the letterhead address.

Should Draper Valley fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the General Permit, it will be in violation of that condition, which violation shall also be subject to this Notice of Intent to Sue and any ensuing lawsuit.

Conclusion

The above-described violations reflect those indicated by the information currently available to Waste Action Project. These violations are ongoing. Waste Action Project intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$55,800 per day for each violation that occurred since November 2, 2015. In addition to civil penalties, Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Waste Action Project believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly

thereafter, to file a citizen suit against Draper Valley under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations addressed in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may begin promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Sincerely,

**SMITH & LOWNEY, PLLC**

By: s/Marc Zemel

Marc Zemel

Claire E. Tonry

Knoll Lowney

cc: Andrew Wheeler, Administrator, U.S. EPA  
Chris Hladick, Region 10 Administrator, U.S. EPA  
Laura Watson, Director, Washington Department of Ecology  
CT Corporation System, Registered Agent (711 Capitol Way S, Ste 204, Olympia,  
WA 98501)